No. 5483

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

JOSE GANDARA,
Plaintiff in Error,

VS.

UNITED STATES OF AMERICA,
Defendant in Error.

ERROR FROM THE UNITED STATES DISTRICT COURT,
DISTRICT OF ARIZONA

DEFENDANT IN ERROR'S BRIEF

JOHN C. GUNG'L,
United States Attorney.
CLARENCE V. PERRIN,
Assistant United States Attorney.
Attorneys for Defendant in Error.

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BRIEF FOR DEFENDANT IN ERROR

The contentions of the plaintiff in error are

(1) To use his own words, as contained on page 4 of his brief:

> "that a party of insurgents or revolutionists came to the United States to procure arms and ammunition to take back with them to continue their revolutionary activities, and that the defendant's acts were exclusively with such enterprise."

(2) That the indictment, to use his own words on page 13 of his brief, is defective because it

> "negatives the main requirement of the law—that is, that it was to be attended by the design of an attack, invasion or conquest; there must be a hostile intention and it must be military, and intended '*to go thence*'."

No demurrer or other pleading was filed attacking the sufficiency of the indictment in the court below.

This waives all objections, except the objection that some substantial element of the crime was omitted.

Berry v. U. S. 259 F, 203. (C.C.A. Cal.)

The statute under which the indictment was found is as follows:

> "Whoever, within the territory or jurisdiction of the United States or any of its possessions, knowingly begins or sets on foot, or provides or prepares a means for or furnishes the money for, or who takes a part in, any military or naval expedition or enterprise to be carried *on from thence* against the territory or dominion of any foreign province or state, or of any colony, district or people with whom the United States is at peace, shall be punished etc."

Said Statute is 5286 of the Rev. Stats. It is set forth as Sec. 25, on page 44, Vol. 18 U. S. C. A. In

the said 18 U. S. C. A. are pages of annotations which should be read, as they bring all cases from the beginning to date.

The plaintiff in error, at the top of page 11 of his brief, says:

> "The indictment in this case follows the language of the statute but as it proceeds to describe, with attempted precision and certainty, the offense intended to be laid, it finally charges the defendant, as hereinabove stated, with a conspiracy, to set on foot and provide and prepare the means for an enterprise having for its object the inciting of armed rebellion, but not to go thence from the United States * * * * * "

We quote from the case of Jacobsen vs. U. S. (C. C. A. Ill. 1921), 272 Fed. 399, certiorari denied, (1921) 256 U. S. 703, 65 L. Ed. 1179, as follows:

> "An indictment is sufficient which charges the offense in substantially the language of the statute."

It is true that the indictment, after alleging that the enterprise was inaugurated near Tucson, Arizona, does not state that it was "to be carried on from thence," but it does state that it was,

> "An enterprise which was to be carried on from Tucson, Arizona."

If the offense was inaugurated at Tucson, Ari-

zona, and was to be carried on from Tucson, Arizona, it is merely a synomomous or perhaps slightly more definite method of saying that it was *inaugurated* at Tucson, Arizona, and was to be carried on from thence.

The distinction attempted to be drawn by the plaintiff in error, as aforesaid, seems to us as frivilous in the extreme.

We think it proper at this time to refer briefly to the evidence, most of which is not contradicted, and that which was contradicted was determined by the jury against the plaintiff in error and upon evidence which thoroughly warranted their said adverse findings.

The plaintiff in error testified that the rebellion of the Yaquis in Mexico had been in existence for years and was particularly hot at the time he came to Tucson, as there had just been a big battle in which General Armenta of the Mexican army was killed. A group of Yaquis had come to the vicinity of Tucson, Arizona, to obtain guns, ammunition and supplies so that they could return with them to the fight in Mexico. The Yaqui Indians in Mexico had a fighting force of between two and three thousand men.

Plaintiff in error was interested in the Yaquis' cause for two reasons, one sentimental, because his grandfather was the first to go in with the Yaquis seventy years ago to free their lands, and the other

reason was that his home in Chihuahua was ransacked by the Obregon soldiers, from the effect of which his mother had died.

Mr. Wren testified that plaintiff in error told him that he furnished the Yaquis with arms and ammunition, provisions and different things for making the trip into Mexico, and said that he was going to lead them.

Antonio Molino one of the Yaquis, testified that Bishop Navarette came to them with Gandara, and said:

> "Now, this Gandara, when he goes to fight, I want you to go with him to the opposite side."

When the Bishop and Gandara were there, Gandara did not talk to the Yaquis who had come from Sonora, but to Chito Valenzuela and other Yaquis, and he was fixing up everything with them. The rifles were to be used to get up a war and fight Mexico.

On cross-examination this witness testified that he had been "opposed to this movement that had been started to send Yaquis down in Mexico ever since this thing about Gandara started which was on San Juan's Day, the 24th day of June." When Gandara talked to this witness he always said that he wanted to go down with those Yaquis who were returning to Mexico.

Francisco Feliz, an Indian, testified that plaintiff in error came to see the Yaquis who had arrived from Mexico; that he was going to help them; that he was going down with them and take rifles, and that they were going down to fight the Mexican government.

After the Bishop left, Gandara told the Yaquis not to be afraid of him; that he was going along with them and to help the Yaquis.

Guadalupa Flores, an Indian who came up from Mexico, said they had been fighting in Mexico for five years. He came back to Tucson with about 22 others because their families were in Tucson and they went to work. Witness said he did not intend to return to Mexico, and did not know whether the others intended to return or not.

John J. Farrell testified that Gandara told him he got the arms, ammunition, canteens and food supplies and was going into Mexico with these Yaquis to fight the Mexican government because it had been mistreating everybody.

John Esteban Riveras, an Indian, testified that Gandara told the Indians he wanted to go back with them to Mexico. "All the men that he could gather around there were going with him, and they were all the Yaquis who had come up from Mexico, who had been fighting them before."

G. V. Hayes testified that Gandara told him that he was equiping the Yaquis for an expedition against Mexico, and that he himself was leading the expedition and that he had personally bought ammunition and provisions for the expedition.

Mr. Hayes further testified that Gandara told him that he was organizing the Yaquis into an expedition of which he was to be the head. He said "He was organizing all the Yaquis he could get hold of."

We will not go further into the testimony, as the foregoing was sufficient to sustain the jury's verdict.

The facts of the case, in brief, are therefore as follows:

The Yaqui Indians were and had been for years carrying on a rebellion against the Mexican government in Mexico.

A group of these Indians came to Tucson, Arizona, to obtain arms, ammunition and supplies with which, some at least, would return to Mexico to carry on the war.

The plaintiff in error attempted to get all the Yaquis possible and furnish them arms, ammunition and supplies and return with them into Mexico, as their leader, to fight the Mexican government.

Plaintiff in error is alleged to have conspired with others to effectually carry out the above plans.

Aside from some decisions concerning the necessary allegations in an indictment the plaintiff in error seems to rely upon one case, namely: U. S. vs. Trumbull, 48 Fed. 99, in support of his theory of the case.

We have given this Trumbull case careful consideration. The facts will be briefly referred to.

A body of men, in Chili, known as the "Congressional Party," were organized and engaged in a revolutionary attempt to overthrow the recognized government of Chili. This Congressional Party obtained a ship called the Italia which it converted into a man-of-war. This ship was dispatched to the United States for the purpose of obtaining arms and ammunition and returning with them to Chili. Prior to the arrival of the ship in the United States, an agent of the Congressional Party, by the name of Trumbull, *came* to the United States and purchased the arms and ammunition in open market, and had them put on board the Italia.

The Court held that the statute in question did not cover such a situation, saying:

> "The very terms of the statue imply that the military expeditions or enterprises thereby prohibited are such as originate within the limits of the United States, and are to be carried on from this country. ' Every person who, within the limits or jurisdiction of the United States, begins or sets on foot, or provides or prepares

the means for, any military expedition or enterprise, to be carried on from thence'—that is to say, from the United States—is the language of the statue. If the evidence shows that in this case there ever was any military expedition begun or set on foot, or provided or prepared for, within the sense of this statue, it was begun, set on foot, provided and prepared for in Chili, and was to be carried on from Chili, and not from the United States. But I think it perfectly clear that the sending of a ship from Chili to the United States, to take on board arms and ammunition purchased in this country, and carry them back to Chili, is not the beginning, setting on foot, providing or preparing the means for any military expedition or enterprise within the meaning of section 5286 of the Revised Statutes. The cases of the Mary A. Hogan, 18 Fed. Rep. 529; U. S. v. Two Hundred and Fourteen Boxes of Arms, etc., 20 Fed. Rep. 50; and U. S. v. Rand, 17, Fed. Rep. 142,—cited by counsel for the United States in support of their position in respect to this point,—do not at all support it. In each of those cases there was a military expedition, and it was organized within, started from, and was to be carried on from the United States. The facts of those cases are wholly different from the facts of the present case."

It will be noted that the Congressional Party had organized a revolution in Chili. It sent a boat from Chili to the United States for arms and ammunitions; it sent its agent, Trumbell, to the United States to purchase arms and ammunition; the said agent purchased the arms and ammunition in the open markets in New York, and placed them on board

of the boat, to be transported back to Chili. Those were the facts which the Court applied to the law in question, and held that they were not violative of such law, because, they did not show a beginning, setting on foot, providing or preparing the means for any military expedition or enterprise to be carried on from the United States. On the contrary, said facts prove that the military enterprise was begun in Chili, and was to be carried on from Chili.

Let us now refer to the facts in the case at bar and their very difference will demonstrate the guilt, under the statue, of the defendant herein.

A Yaqui Indian revolution was in progress in Mexico. After a big battle, a band of the Indians came to the United States, some of the band intending to remain in the United States, and others of the band intending to obtain arms, ammunition and supplies and return to the fighting in Mexico. Upon their arrival in the United States, the plaintiff in error, Gandara, hunted them up, forced his way into their confidence, purchased and donated to them arms, ammunition and supplies, exhorted these Indians, and *other indians* who were residing in the United States, to band themselves together and return to Mexico to fight the Mexican Government, and he, the said Gandara, was himself to return to Mexico with such Indians, and as their leader.

Gandara was not an agent of the Yaquis, sent

by them into the United States to purchase for them in the open markets arms and ammunition, and this band of Yaquis did not come to the United States to receive such arms and ammunition from their said agent and return with them to Mexico.

Gandara was and had been living in the United States, at El Paso, Texas, for many years. He hunted up these Indians; he purchased for and gave them, without compensation, arms and ammunition; he exhorted them, and other indians, to return to Mexico and fight; and he himself was to accompany them on their return into Mexico, and to act as their leader and engage himself in the revolution.

We submit that Gandara did, therefore, set on foot, provide and prepare the means, if not in whole then in a material part, for a military enterprise to be carried on in Mexico from the United States.

The trial Court in his charge to the jury, and after quoting the statute under which the indictment was brought, said:

> "You will observe, Gentlemen, that the enumerated acts which constitute the offense under this Section 13, are all in the disjunctive. To begin the military expedition spoken of is an offense within the statute. To begin it is to do the first act which may lead to the enterprise. The offense is consummated by any overt act which shall be a commencement of the expedition, though it should not be prosecuted. Or,

if an individual shall 'set the expedition on foot,' which is scarcely distinguishable from beginning it. To set it on foot may imply some progress beyond that of beginning it. Any combination of individuals to carry on the expedition is 'setting it on foot' and the contribution of money or anything else which shall induce such combination may be a beginning of the enterprise.

"To provide the means for such an enterprise is within the statute. To constitute this offense, the individual need not engage personally in the expedition. If he furnish the munitions of war, provisions, transportation, clothing, or any other necessaries to men engaged in the expedition, he is guilty, for he provides the means to carry on the expedition.

"It must be a nation or people with whom we are at peace. 'In passing the above law, Congress has performed a high national duty'—and in quoting this I am reading from a charge of one of the Judges of the Supreme Court. 'A nation, by the laws of nations, is considered a moral being, and the principle which imposes moral restraints on the conduct of an individual applies with greater force to the actions of a nation.'

"'Justice,' says Vattel, who, by the way, was one of the great authorities on International Law and wrote a celebrated work on International Law, 'is the basis of society, the sure bond of all commerce. Human society, far from being an intercourse of assistance and good offices, would be no longer anything but a vast scene of robbery, if there were no respect to this virtue, which secures to every one his own.'

"It is still more necessary between nations than between individuals, because injustice produces more dreadful consequences in the quarrels of these powerful bodies politic, and it is still more difficult to obtain redress.

"Before a jury can convict, it must be proved to their satisfaction that the expedition or enterprise was in its character military; or, in other words, it must have been shown by competent proof that the design, the end, the aim, and the purpose of the expedition, or enterprise, was some military service, some attack or invasion of another people or country, state or colony as a military force.

"This statute does not require any particular number of men to band together to constitute the expedition or enterprise one of military character. There may be divisions, brigades and regiments ,or there may be companies or spuads of men. Mere numbers do not conclusively fix and stamp the character of the expedition as military or otherwise. A few men may be deluded with the belief of their ability to overturn an existing government or empire, and laboring under such delusion, they may enter upon the enterprise. * * * * Evidence showing that the end and objects were hostile to or forcible against a nation at peace with the United States characterizes it, to all intents and purposes, as a military expedition or enterprise.

"The words 'military enterprise,' while including a military expedition, have been held by the Supreme Court to give a wider scope to the statute than the latter term, and that a military enterprise may consequently include various undertakings by single individuals, as well as by a number of persons. It has been held that

this Section does not require that the expedition should have actually set out or any particular number of men, the crime being completed by the organization only. The words, 'to be carried on from thence' are employed in the sense of carrying out, or forward, 'from thence.'

"Reading again from a case considering this statute, 'The statute defines the offense disjunctively as committed by every person who, within the territory or jurisdiction of the United States, knowingly begins, or sets on foot or provides or prepares a mean for, or furnishes the money for, or who takes part in, any military or naval expedition or enterprise to be carried on from thence, against the territory or dominion of any foreign state, district or people with whom the United States is at peace.'

"Begin is to do the first act, to enter upon; to begin an enterprise is to take the first step; the initiatory movement of an enterprise, the very formation and commencement of an expedition. To 'set on foot' is to arrange, to place in order, to set forward, to put in way of being ready. To provide is to furnish and supply; and 'to procure means' is to obtain, bring together, put on board, to collect.

"The beginning, the setting on foot, or the providing or procuring materials for such an expedition or enterprise must be within the territory or jurisdiction of the United States, and to be carried on from thence, against the territory or dominions of some foreign state, colony, district, or people, with whom the United States were at peace.

"A single individual may begin or set on foot a military expedition or enterprise, and a

single individual may provide or prepare the means for such an expedition or enterprise."

We believe the law is as follows:

The statute must be reasonably construed in such a way as not to defeat the obvious intention of the Legislature. Wiborg v. U. S. (Pa. 1896) 163 U. S. 632, 16 S. Ct. 1127, 1197, 41 L. Ed. 289. It is to be construed as other domestic legislation is, and its meaning is to be found in the ordinary meaning of the terms used. Wiborg v. U. S. (Pa. 1896) 163 U. S. 632, 16 S. Ct. 1127, 1197, 41 L. Ed. 289.

The statute defines the offense disjunctively as committed by every person who, within the territory or jurisdiction of the United States, "begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise to be carried on from thence." Wiborg v. U. S. (Pa. 1896) 163 U. S. 632, 16 S. Ct. 1127, 1197, 41 L. Ed. 289.

It has been held that this section creates two offenses: (1) setting on foot, within the United States a military expedition, to be carried on against any power, etc., with whom the United States are at peace; (2) providing the means for such expedition. U. S. v. Hart (D. C. Pa. 1897) 78 F. 868, affirmed Hart v. U. S. (1898) 84 F. 799, 28 C. C. A. 612.

But in another case it was said that "there are four acts which are declared to be unlawul, and

which are prohibited by the statute: to 'begin' an expedition; to 'set on foot' an expedition; to 'provide' the means for an enterprise; and lastly to 'procure' those means." U. S. v. O'Sullivan (D. C. N. Y. 1851) 27 Fed. Cas. No. 15,975.

"Begin" is to do the first act; to enter upon. To begin an enterprise is to take the first step; the initiatory movement of an enterprise, the very formation and commencement of an expedition. "To set on foot" is to arrange, to place in order, to set forward, to put in way of being ready. "To provide" is to furnish and supply; and "to procure the means" is to obtain, bring together, put on board, to collect. The beginning, the setting on foot, or the providing or procuring materials for such an expedition or enterprise, must be within the territory or jurisdiction of the United States, and to be carried on from thence, against the territory or dominions of some foreign prince or state, colony or district or people, with whom the United States were at peace. U. S. v. O'Sullivan (D. C. N. Y. 1851) 27 Fed. Cas. No. 15,975. See, also U. S. v. Ybanez (C. C. Tex. 1892) 53 F. 536, where the court further said, charging a jury: "There are certain acts which are declared to be unlawful, and which are prohibited by the statute, to wit, to begin an expedition; to 'set on foot' an enterprise,—the expedition or enterprise, in either case, having reference to one of a military character."

It is not necessary, to warrant a conviction, that there shall at any time be in existence a military expedition or enterprise. It is sufficient if a military enterprise was a part of the intent and purpose of those engaged in the doing of the things prohibited by the statute. Any offense under the statute may be committed by an individual. Jacobson v. U. S. (C. C. A. Ill. 1921) 272 F. 399, certiorari denied Jacobson v. U. S. (1921) 41 S. Ct. 625, 256 U. S. 703, 65 L. Ed. 1179.

To sustain an indictment under this section, charging that defendants did "begin, set on foot, provide, or prepare the means for" a military expedition against a friendly power, it is not necessary that the acts of defendants should have progressed so far as the complete organization and sending of such expedition, or that it was to be wholly carried on from the United States, but it is sufficient if the plan was made and was to be directed from here, and that funds were collected in this country for carrying it out. Jacobsen v. U. S. (C. C. A. Ill. 1921) 272 F. 399, certiorari denied Jacobson v. U. S. (1921) 41 S. Ct. 625, 256 U. S. 703, 65 L. Ed. 1179.

Meaning of "expedition" or "enterprise"—"The term 'expedition' is used to signify a march or voyage with martial or hostile intentions. The term 'enterprise' means an undertaking of hazard, an arduous attempt." U. S. v. O'Sullivan (D. C. N. Y.

1851) 21 Fed. Cas. No. 15,975; U. S. v. Ybanez (C. C. Tex. 1892) 53 F. 538.

The word "enterprise" is somewhat breader than the word "expedition"; and although the words are synonymously used, it would seem that under the rule that its every word should be presumed to have some force and effect, the word "enterprise" was employed to give a slightly wider scope to the statute. Wilborg v. U. S. (Pa. 1896) 163 U. S. 632, 16 S. Ct. 1127, 1197, 41 L. Ed. 289. See, also, U. S. v. Murphy (D. C. Del. 1898) 84 F. 609.

The language of the statute is very comprehensive and peremptory. It brands as a national offense the first effort or proposal by individuals to get up a military enterprise within this country against a friendly one. It does not wait for the project to be consummated by any formal array, or organization of forces, or declaration of war; but strikes at the inception of the purpose, in the first incipient step taken, with a view to the enterprise, by either engaging men, munitions of war, or means of transportation, or funds for its maintenance; and even further, it is not necessary that the means shall be actually provided and procured. The statute makes it a crime to procure those means. This would clearly comprehend the making ready, and the tender or offer of such means to encourage or induce the expedition; and may probably include also any plan

or arrangements, having in view the aid and furtherance of the enterprise. U. S. v. O'Sullivan (D. C. N. Y. 1851) 27 Fed. Cas. No. 15,975.

Probably a previously concerted movement or arrangement, with a distinct reference to the recruitment of men, would be sufficient to constitute such a beginning. And if this was followed up by the designation of a plan for an enlistment or enrollment, though there should be no proof that any were actually enlisted or enrolled, it would bring the parties implicated within the operation of the section referred to. U. S. v. Lumsden (C. C. Ohio, 1856) 1 Bond 5, 26 Fed. Cas. No. 15,641.

An expedition is begun or set on foot within the meaning of the statute where one takes part in collecting a body of men and in collecting arms and equipment with the intent that the two shall be combined afterwards so as to form a complete expedition. U. S. v. Nunez (C. C. N. Y. 1896) 82 F. 599.

The actual enlistment or enrollment of men, with the purpose of engaging in an unlawful military expedition or enterprise, is clearly within the statute. U. S. v. Lumsden (C. C. Ohio, 1856) 1 Bond 5, 26 Fed. Cas. No. 15,641.

A single individual may violate this section by setting on foot a military expedition. U. S. v. Ram Chandra (D. C. Cal. 1917) 254 F. 635; U. S. v. Burr (D. C. Va. 1807) 25 Fed. Cas. No. 14,694.

To "provide or prepare the means for any military expedition or enterprise," within the meaning of this section such preparation must be made as shall aid the expedition. The contribution of money, clothing for the troops, provisions, arms, or any other contribution which shall tend to forward the expedition or add to the comfort or maintenance of those engaged in it, is a violation of this provision. Charge to Grand Jury (C. C. Ohio, 1838) Fed. Cas. No. 18,265; Charge to Grand Jury (C. C. Ohio, 1851) Fed. Cas. No. 18,267; Charge to Grand Jury (C. C. La. 1859) Fed. Cas. No. 18,268.

To provide the means for the expedition, as the enlistment of men, the munitions of war, money, in short, anything and everything that is necessary to the commencement and prosecution of the enterprise, is within the statute. Charge to Grand Jury (C. C. Ind. 1851) 5 McLean 249, 30 Fed. Cas. No. 18,266.

Any contribution which tends to form, or assistance given to those engaged in a military expedition or enterprise of the character prohibited by the statute must be considered within its purview. U. S. v. Hughes (D. C. S. C. 1895) 70 F. 972.

The words "military enterprise," while including a military expedition, has a wider scope than the latter term.

A military expedition is a journey or voyage by

a company or body of persons having the position or character of soldiers, for a specific warlike purpose; also the body and its outfit; and a military enterprise is a martial undertaking, involving the idea of a bold, arduous, and hazardous attempt. Wiborg v. U. S. (Pa. 1896) 163 U. S. 632, 16 S. Ct. 1127, 1197, 41 L. Ed. 289, modifying U. S. v. Wiborg (D. C. Pa. 1896) 73 F. 159.

A military expedition comprehends any combination of men, organized in this country, however imperfectly, and provided with arms and ammunition, to go to a foreign country, and make war on its government. U. S. v. Hart (D. C. Pa. 1897) 78 F. 868, affirmed Hart v. U. S. (1898) 84 F. 799, 28 C. C. A. 612.

It is immaterial whether the expedition intends to make war as an independent body, or in connection with others. Wiborg v. U. S. (Pa. 1896) 163 U. S. 632, 16 S. Ct. 1127, 1197, 41 L. Ed. 289, modifying U. S. v. Wiborg (D. C. 1896) 73 F. 159; U. S. v. Hart (D. C. Pa. 1897) 78 F. 868, affirmed Hart v. U. S. 1898) 84 F. 799, 28 C. C. A. 612.

A military expedition or a military enterprise may consist of few or many men. The existence or character of the military expedition or the military enterprise does not require concerted action on the part of a large number of individuals. U. S. v. Murphy (D. C. Del. 1898) 84 F. 609; U. S. v. Ybanez

(C. C. Tex. 1892) 53 F. 536; U. S. v. Chakraberty (D. C. N. Y. 1917) 244 F. 287.

A hostile expedition dispatched from the ports of the United States is within the words "carried on from thence." Wiborg v. U. S. (Pa. 1896) 163 U. S. 632, 16 S. Ct. 1127, 1197, 41 L. Ed. 289.

The carrying on from the United States of an expedition against a neutral power is an offense, though the association originated in another country. Ex parte Needham (C. C. Pa. 1817) Fed. Cas. No. 10,080.

Where arms, military stores, and means for the transportation of them, and of the men subsequently taken on board, were here provided and started out, it was held that a military enterprise was begun or set on foot within the territory of the United States to be carried on from thence though the men were not taken on board until the vessel reached a foreign port. U. S. v. Rand (D. C. Pa. 1883) 17 F. 142.

Neither prior recognition of legitimacy nor belligerency of the government or faction against which the expedition is directed, by this government, is necessary to make applicable the provisions of this section. De Orozco v. U. S. (Tex. 1916) 237 F. 1008, 151 C. C. A. 70, citing The Three Friends (Fla. 1897) 17 S. Ct. 495, 166 U. S. 1, 41 L. Ed. 897, and holding that it would be an offense under this section to prepare a military expedition to be carried on

against the Carranza government in Mexico, though his government had not been recognized as the legitimate government of Mexico.

While the statute was, as a general purpose, enacted to secure neutrality in wars between two other nations or between contending parties recognized as belligerents, its operation is not necessarily dependent on the exercise of belligerency. Wiborg v. U. S. (Pa. 1896) 163 U. S. 632, 16 S. Ct. 1127, 1197, 41 L. Ed. 289.

To constitute the offense, it is not necessary that the expedition should start for its destination. U. S. v. Ybanez (C. C. Tex. 1892) 53 F. 536; U. S. v. O'Sullivan (D. C. N. Y. 1851) Fed. Cas. No. 15, 975; U. S. v. Chakraberty (D. C. N. Y. 1917) 244 F. 287.

Where the question was raised that there should have been no conviction because the evidence did not show that all that was done by the defendants did constitute a military enterprise, the court said: "Whether what the defendants did actually reached the dignity of a military expedition or enterprise is not deemed material, if the evidence shows that, under the conspiracy charge, the conception, the thing they intended, amounted to a military expedition or enterprise, and if under the other charge the defendants did in the way charged any one or more of the things charged." Jacobsen v. U. S. (C. C. A. Ill.

1921) 272 F. 399, certiorari denied (1921) 41 S. Ct. 625, 256 U. S. 703, 65 L. Ed. 1179.

The government earnestly contends that the defendant in this action was properly convicted and his rights in every way protected and it submits the matter to this Honorable Court in utmost confidence that the government's contention will be sustained.

Respectfully submitted,

JOHN C. GUNG'L,
United States Attorney.

CLARENCE V. PERRIN,
Assistant United States Attorney
For Defendant in Error.